



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 6641-99

17 April 2000

LT [REDACTED] USN

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 7 and 29 February 2000, copies of which are attached. They also considered your counsel's rebuttal letter dated 28 March 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion dated 7 February 2000 in finding that your contested fitness report for 1 December 1997 to 31 August 1998 should stand. They did not find this report to be internally inconsistent. Further, they noted that block 16 reflects you were advised of your right to make a statement, but declined. They found that even if you are correct that the report is adverse, your not having had it referred to you by means of a letter would not invalidate it.

The Board found that your failure by the Fiscal Year 2000 Line Lieutenant Selection Board should stand as well. They substantially concurred with the conclusion of the advisory opinion dated 29 February 2000 in finding that you failed to exercise due diligence to ensure that your fitness report for 1 March to 25 June 1999 would be available to the selection board. While they disagreed with the statement, in the advisory opinion, that this report "was not a regular report," noting that it is a detachment of reporting senior report marked "regular" in block 17, they found that this report would not have appreciably enhanced your

chances for selection. In this regard, they noted that your contested report for 1 December 1997 to 31 August 1998 would have been in your record in any event, and that your missing report marked you "promotable" in the "promotion recommendation." Since they found insufficient basis to remove your failure of selection to lieutenant, they had no basis to recommend you for consideration by a special selection board.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures

Copy to:  
Tim S. McClain, Esq.



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

6641-99

1610  
PERS-311  
7 February 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LT [REDACTED] - US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness report for the period 1 December 1997 to 31 August 1998, removal of failure to select, promotion to Lieutenant or in the alternative, reconsideration at a special Lieutenant selection board.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the fitness report and his right to submit a statement. The member did not desire to submit a statement. Per reference (a), Annex S, paragraph S-8 the member has two years from the ending date of the fitness report to submit a statement if desired. The member's statement must be forwarded to Naval Personnel Command (PERS-311) via the reporting senior who submitted the original report for his endorsement.

b. The member alleges the fitness report is internally inconsistent, not reflections of his true performance and was highly prejudicial to him at the Lieutenant selection board. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he or she must provide evidence to support the claim. I do not believe Lieutenant Junior [REDACTED] done so. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

c. The reporting senior is charged with commenting on the performance or characteristics of an officer under his/her command and determines what material will be included in a fitness report. The reporting senior clearly explains in the comments section of the fitness report his reason for

writing the report as he did. Fitness reports are not required to be consistent with previous or subsequent reports.

d. Comments concerning the fitness report for the period 1 March 1999 to 25 June 1999. The Member is indeed correct in that the fitness report was placed in his digitized record on 12 July 1999. We are not able to determine if the member forwarded a copy of the report to the Lieutenant Selection Board. It should also be noted that the end date of the fitness report is 25 June 1999. Even if the reporting senior mailed the report on the date he signed it, 18 June 1999, without the member sending a copy of the report to the selection board himself, the report would not have been in his official record in time for the board.

e. Further review of the member's record revealed the concurrent/detachment of individual fitness report for the period 19 November 1998 to 1 March 1999 was filed in error. It was not counter-signed by the regular reporting senior. We have removed it from the member's record and forwarded it to the regular reporting senior for signature.

f. The fitness report for the period 1 December 1996 to 6 April 1997 is missing from the member's record. If the member will forward the report we will place it in the member's record.

g. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged and the petition be forwarded to the Director, Active Officer Promotions, Appointments, and Enlisted Advancement Division (PERS-85) for comments on the members failure to select, promotion to Lieutenant, or reconsideration at a special selection board.

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Head, Performance  
Evaluation Branch



DEPARTMENT OF THE NAVY  
BUREAU OF NAVAL PERSONNEL  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

6641-99

1400  
PERS-85  
29 Feb 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LTJG [REDACTED], USN [REDACTED]

Ref: (a) PERS-311 ltr 1610 PERS-311 of 7 Feb 00

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LTJG [REDACTED] request for removal of his failure of selection and request for a special board. Modification of his record has been addressed by reference (a).

2. [REDACTED] claims that the FY-00 Active-Duty Lieutenant Line Promotion Selection Board failed to have before it his 1 March 1999 through 25 June 1999 fitness report. Our records indicate that the fitness report in question was not received by the Selection Board prior to convening. This fitness report was for the reporting period ending 25 June 1999. The O3 promotion selection board convened 28 June 1999. In order for this detachment of reporting senior fitrep to be considered by the board, [REDACTED] should have submitted it to the board president as correspondence to the board. He did not submit the fitness report to the board, thereby showing due diligence. lack of [REDACTED] Since the fitness report was not a regular fitness report, it was not needed for continuity purposes for a promotion decision. The board considered the officer record information available and determined him not best qualified.

3. Recommend disapproval of his request [REDACTED]

[REDACTED]  
BCNR Liaison,  
Officer Promotions Division